

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF ST. PAUL

In the Matter of the Application  
of Saint Paul Firearms Co. for  
a Firearms Dealer's License at  
634 North Snelling Avenue

FINDINGS OF FACT,  
CONCLUSIONS OF  
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on June 21 and 22, 1993, in conference rooms W-14 and 15 of the Ramsey County Courthouse, St. Paul, Minnesota. David Feinwachs, Attorney at Law, 2221 University Avenue S.E., Suite 425, Minneapolis, Minnesota 55414, appeared on behalf of the Applicant Saint Paul Firearms Co. Philip B Byrne, Assistant City Attorney, 800 Landmark Tower, 345 St. Peter Street, St. Paul, Minnesota 55102, appeared on behalf of the St. Paul Office of license, Inspections and Environmental Protection (LIEP). Laura Melnick, Attorney at Law, 737 Aldine Street, St. Paul, Minnesota 55104, appeared on behalf of Intervenor Hamline-Midway Neighborhood Stability Coalition (Coalition). The record was closed on June 30, 1993, upon receipt of the post-hearing memoranda.

This report is a recommendation, not a final decision. The St. Paul City Council will make the final decision after a review of the record which may accept, reject or modify the Findings, Conclusions and Recommendations contained herein, Pursuant to 310.05(c-1) of the St. Paul Legislative Code, after receipt of this Report, the City Council shall provide an opportunity to present oral or written arguments alleging error in this Report and to present argument related to any recommended adverse action.

STATEMENT OF ISSUES

Whether a gun shop located at 634 North Snelling constitutes a public nuisance so as to require denial of a firearms dealer's license at that location

Based upon the record herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Applicant is a corporation owned by Gregg A. Perkins of 1757 Juliet, St. Paul, Minnesota 55105. Perkins is the president of Applicant and its only officer. Perkins is also the owner of Perkins Macalester Electric and is

a licensed electrical contractor. Perkins is 43 years old and is married.

2, On February 3, 1993, Perkins completed and submitted to LIEP an application for a license for the sale of firearms by Applicant at 634 North Snelling Avenue (the Gun Shop). Ex. 1.

3. At the time of the application Perkins was the holder of Federal Firearms License No. 3-41-062-03-58-3470, which is Type 3 license given to collectors of "curios and relics." Ex. 4. He had an application for a Federal Firearms Dealer's License pending at the time. Ex. 1.

4. The application was reviewed and approved by all the appropriate divisions and departments of the City, including the Police Department, the Fire Department, the Zoning Administrator, the City Attorney and the License Division. The proposed site of the business is zoned 62 and complies with the Zoning Code and the building structure has a Certificate of Occupancy for the proposed use. LIEP recommended to the City Council that the application complied with all requirements and that the license should be granted- Ex. 1; Testimony of Robert Kessler.

5. The Gun Shop is located near the middle of the Hamline-Midway Neighborhood which, for purposes of this proceeding, is defined as that area of west central St. Paul bounded by Lexington Avenue on the east, University Avenue on the south, Prior Avenue on the west, and Pierce Butler Route on the north. University Avenue and Snelling Avenue, which runs north-south through the Neighborhood, are major traffic arteries and commercial streets lined with retail businesses and other commercial uses, except that the northern portion of Snelling Avenue within the Neighborhood is dominated by Hamline University and is otherwise more residential.' The western edge of the Neighborhood between Fairview and Prior and south of Minnehaha is commercial and industrial,

6, Except for the commercial areas along University and Snelling Avenues and the southern parts of Fairview and Prior Avenues, the Hamline-Midway Neighborhood is entirely residential and consists mostly of neat, well-kept, middle-class homes and apartments, churches, schools and playgrounds. It is a diverse neighborhood where residents feel generally "safe" and where there is strong community involvement and cooperation in maintaining and improving the Neighborhood. There are about 18,000 residents of the Hamline-Midway Neighborhood.

7. 634 North Snelling is located on the east side of Snelling Avenue on the block between LaFond and Blair Avenues. The Gun Shop is to be located in

a two-story storefront building located at the corner of Snelling and LaFond.

Two pictorial views of Snelling Avenue have been presented in evidence. The Coalition introduced photographs of the Gun Shop and nearby Hamline Park Playground, Exs. 8-11, that make it appear as though there is no traffic on Snelling Avenue and that the Gun Shop sits in the middle of a quiet little neighborhood. Applicant introduced a photograph, Ex. 13, looking south on Snelling from Minnehaha Avenue that compresses the view from Minnehaha to University Avenue and beyond, and makes it appear that Snelling is a very busy commercial street with no residential uses. There are some elements of truth to each view.

The south half of the building is occupied by a dentist's office and the Gun Shop is to occupy the north half of the building, The second floor has apartments. Ex. 8. To the north of the Gun Shop is a single-story brick storefront containing a photography studio. Ex. 8. To the north of that, occupying the remainder of the block up to Blair Avenue, is a Jiffy Lube automobile service business, Exs. 9 and 13. The block of Snelling south of LaFond and east of Snelling is occupied by Hamline Park Playground. It contains a historic park building. The building was saved and restored and playground equipment is being added through the efforts of the Coalition. Exs. 9-11 Testimony indicates there is a day care center in the area, but the record does not indicate where.

8. Applicant obtained the storefront in which it proposes to operate and added signage over the windows in March, 1993, that says, "Saint Paul Firearms Co." A sign painted on the window says "Collectible & Sporting Firearms, Military Souvenirs", Ex. 8.

9. It had been Applicant's intention to sell military memorabilia, collectibles and antiques as well as firearms and ammunition, Part of that memorabilia would include World War II German memorabilia, some of which would bear a swastika. During prehearing proceedings, Perkins became aware that the St. Paul Legislative Code requires a Class I license for secondhand dealers and indicated that he may not deal in such items, but would seek such a license if he did. No application had been made for a secondhand dealers license at the time of the hearing.

10. There are 30 firearms dealers in St. Paul licensed by the City. Ex. 5. Three of them are located within the Hamline-Midway Neighborhood. Ex. 6. They are the Target Store at 1300 University Avenue West, the Holiday Station Store at 600 North Snelling Avenue and Don's Gun Finishing at 1821 University Avenue West. There are about 150 persons or businesses holding federal firearms dealer's licenses in St. Paul, 12 of which are located within the Hamline-Midway Neighborhood. Exs. 4 and 6. There are also five businesses that hold federal firearms licenses as pawnbrokers, two of which are located within the Hamline-Midway Neighborhood, and 11 persons licensed as collectors,

none of which are located in the Neighborhood. Ex. 4. A majority of the persons holding federal firearms dealers licenses apparently operate out of their homes without a license from the City. Persons holding federal firearms dealer's licenses are required to have "premises" from which they conduct their business by 18 USC 923(d)(i)(E), but nothing in the federal law appears to require a dealer to actually engage in the sale of firearms or ammunition. It appears that many federally licensed dealers use their licenses to facilitate their own purchases or engage in their business at gun shows or similar events.

11. At his home in St. Paul, Perkins has a small shooting range in his basement. He built the range in 1986. It extends from an area in the basement through the foundation and out under the front yard for some unknown distance, probably several yards. Construction of the range required digging down from the front yard, a process that aroused the curiosity of neighbors. The range has a pulley system that allows a target to be moved to the far end

and then retrieved, Perkins loads or reloads bullet cartridges and has a device known as a chronograph that measures the speed of bullets by measuring the time it takes the bullet to pass between two points. The speed is used to determine the proper type and amount of gun powder to use. When a bullet is fired through such a chronograph, it is necessary to use a "bullet trap", which is any sort of device used to stop or catch a bullet, usually without harming it, Perkins has used his shooting range as a bullet trap in connection with the chronograph. He has also used it purely as a private shooting range. In doing so, he has discharged firearms in his basement. He has also allowed others to discharge firearms in his shooting range, including his son and a nephew. Perkins uses safe shooting procedures, such as requiring the use of hearing protection, and keeps the range closed and locked when not in use. Perkins has not registered the range in his basement with the St. Paul Police Department or any other agency.

12. During the summer of 1986, Perkins showed Joan Perkins, who at that time was married to Perkins' brother Eric, some of his firearms collection. One of the weapons was a sawed-off shotgun that Perkins told her he had sawed off to 12 inches in length. He also told her that 12 inches was below the legal limit-

13. Joan Perkins had married Eric in 1974. During the 70's, she and Eric often socialized with Perkins and others and they often went camping. On the camping trips, it was Gregg Perkins' practice, along with others in the group, to shine truck headlights or spotlights on deer, which causes them to freeze in place, and, at least on occasion, attempt to shoot the deer. On one of those occasions, Joan Perkins observed Perkins shoot at a spotlighted deer, but miss.

14. The background checks by the City's Police Department revealed no arrests, charges or conviction of any sort against Perkins.

15. A substantial number of the residents of the Hamline-Midway Neighborhood abhor the increasing violence in our society, take comfort in the fact that the Neighborhood remains relatively safe, fear the encroachment of violence into the Neighborhood from other areas of the City, believe that the

increase in guns is an integral part of that increase in violence and see the Gun Shop as a symbol of that violence and as a source of additional guns to support an increase in violence in the Neighborhood and among their children. Several feel great anxiety about the presence of the Gun Shop because it sells guns and do not want their children even to see such a business because it would tend to normalize or legitimize the sale of guns in the minds of their children, contrary to their own beliefs. Some residents believe that the presence of a gun shop in the Neighborhood will increase the interest of some children in firearms and lead some of them to obtain their own guns and increase the presence of guns at the high school that serves the neighborhood, Central High School. Some feel that the presence of the Gun Shop will cause some of their children increased anxiety and fear for their own safety because of their fear of guns. Several residents and business operators within the Neighborhood perceive the Gun Shop, because of the fact that it will openly and blatantly sell firearms and ammunition, as a detriment to the Hamline-Midway Neighborhood, a sign of deterioration of the Neighborhood and, because of the resulting perception of the Neighborhood being less desirable a cause of lowered property values and decreased business for other businesses in the Neighborhood. Some residents feel that their safety and the safety of their



children passing or playing near the Gun Shop will be diminished by the possibility of violence that might occur at the Gun Shop such as burglaries, robberies and by the fact that people who purchase guns will be parking in front of homes in the Neighborhood and carrying their purchases from the Gun Shop to their cars. It is especially troubling to most residents who oppose the Gun Shop that it is located on the block adjacent to the Hamline Park Playground block, Some residents observed or heard of a swastika on memorabilia in the Gun Shop, are upset with the prospect of such symbols of hatred and horror being sold commercially and object to the Gun Shop on that ground. Some feel that a majority of the residents should be allowed to decide on what businesses will be allowed to operate in the Neighborhood.

16 On March 12, 1993, Joette Hamann, who has lived for 16 years on LaFond, one-half block from Snelling, was driving on Snelling and noticed Applicant's signs in the Gun Shop, She was greatly concerned and very fearful because the Gun Shop can be seen from her front door. Her children play in the front yard and go to the Hamline Park Playground and she did not want her children to see the selling of guns as normal or to see monetary value put on hate crimes. She feels that her block is residential, even that part of it facing Snelling and that they have a right to feel safe in their neighborhood. She has a fear of guns because they have become so commonplace and so many people have guns. She does not want her children exposed to the Gun Shop because children have such a fascination with guns, because they are so prevalent in the media, no matter how much parents attempt to educate their children as to the dangers of guns.

17. On March 13, 1993, Hamann contacted the Coalition staff person who suggested that the Gun Shop issue be raised at the March 16, 1993 meeting of the Coalition, At that meeting, the Coalition authorized staff support for an effort to oppose the Gun Shop in the Hamline-Midway Neighborhood,

18. Hamann and several other people began collecting signatures on petition forms that bore the following statement:

We, the undersigned Hamline Midway neighborhood residents and business owners oppose the location of Saint Paul Firearms in our community or any residential neighborhood. We believe this is a business that will have a blighting impact on the Hamline Midway and represents a negative influence.

Signatures were also obtained on blank pieces of paper that did not contain that statement. Ex. 24. During April, May and most of June 1993, 653 signatures were obtained. The great majority of the signers live within the Hamline-Midway Neighborhood while a few appear to be people who attend church in the Neighborhood or are business owners in the Neighborhood. At least 64 students are among the signers of petitions circulated in local schools. The people collecting the signatures had a very high rate of success in obtaining signatures at all the doors they knocked on; there were very few refusals,

19. Several newspaper articles in the Twin Cities over the last two years have reported burglaries, robberies and killings at various gun shops. The November 12, 1991 Star Tribune reported that at least ten gun shops had been robbed during the previous year in Minnesota and that the stolen guns



were getting into the hands of drug dealers, gangs and youth and were being used to commit other crimes, Ex. 15. A November 15, 1991 article in the Star Tribune spoke of State Representative Randy Kelly of St. Paul sponsoring legislation that would require gun shops to secure their weapons against burglaries as a way to prevent pistols from being stolen from gun shops, often by teenagers, Ex. 16. On June 25, 1992, the Star Tribune ran an article regarding the increasing number of gun shop burglaries and robberies and the increasing violence accompanying such robberies, including the killing of two store employees in a North Minneapolis gun shop that had just been robbed, According to the article, police and federal authorities blamed the trend on a growing demand for weapons by gangs and drug dealers, particularly for pistols, The article reported that gun shop robberies occurred throughout the state- Ex- 17. A February 22, 1993 Star Tribune article reported about the fact that a student in St. Paul and one in Minneapolis had been shot at school during the past month and discussed the presence of guns in Twin Cities schools, In the article, students at St. Paul Central High School reported the presence of guns at that school. The article goes on to note that guns in the schools are a problem nationwide and in urban, suburban and rural schools alike. Ex, 20,

20 The Department of Public Safety has adopted temporary rules and is in the process of adopting permanent rules specifying security standards for firearms dealers. According to the Notice of Intent to Adopt Rules published at 18 State Register 25-28 (July 6, 1993), the rules are being adopted pursuant to Minn. Stat. 624.7161, which was enacted in response to the recent phenomena of "smash and grab burglaries" of Minnesota gun stores and are designed to reduce the number of stolen handguns,

21. Deborah Clemmensen testified as to the effects of violence on children. She is a licensed psychologist and licensed school psychologist, now working in the area of child guidance. She testified that still uncompleted research tends to show that children exposed to the violence through the media and by observing other children acting violently or being treated violently tend to behave more aggressively and violently themselves. She was of the opinion that guns are a powerful symbol for children and for younger children may be a symbol of power; for more experienced youth, a

threat to their safety and for some older children, an attractive symbol of power and strength. She spoke of a cultural responsibility that now exists beyond parental responsibility to reduce the exposure of children to violence and the fear that it invokes. She spoke of gun shops as symbols of violence for children because guns are sold there.

22. A group of business owners on University Avenue known as University United, supports the Coalition's opposition to the Gun Shop because they feel it is located too close to a park and is not compatible with nearby businesses. Jim Curran, owner of Pizza Papa on University just west of Snelling, spoke on behalf of his business and University United. University United has taken an active position in the past in opposing businesses such as the Faust Theater, Belmont Club and Ecstasy Video, all of which offered sexually-oriented entertainment or products. Curran and University United perceive the Gun Shop as a detriment to economic growth, especially for businesses such as Curran's Pizza Parlor which depend upon area families and a perception among its customers of a safe environment. Curran was aware of no evidence, however, linking the presence of a gun shop to any detrimental

effect on any business.

23. There are other businesses along Snelling and University Avenues within the Neighborhood that different people might consider undesirable, depending upon their understanding of the businesses and their personal values. These include a massage parlor that has been accused of being a front for prostitution, a liquor store, a pawn shop, a bookstore with adult books and magazines, a surplus/used goods liquidator and a coffeehouse.

24. Ron Johnson, the owner of a pharmacy at Minnehaha and Snelling, 2 112 blocks north of the Gun Shop, believes that the Gun Shop would create a perception of the area being run down or declining which would be detrimental to his business. He and his pharmacy have been the victims of gun-point robberies and of people in front of the pharmacy with guns chasing each other into his store. However, he feels that the pawn shop located across the street from his pharmacy has had no negative impact on his business, even though the pawn shop is licensed to sell guns and advertises that it does so. Johnson feels that the nearby massage parlor also creates an impression of the Neighborhood being run down, but believes that the impact has been slight because it has been in the Neighborhood so long.

25. Kathleen Sundberg, owner of the new coffeehouse at 721 North Snelling, testified that many of the 2/3 of her customers that come from the Hamline-Midway Neighborhood have expressed concern about the Gun Shop. Some of her customers from out of the area have expressed some concern about the Gun Shop and Sundberg feels that they may be less likely to patronize her business because of its closeness to the Gun Shop.

26. Joanna Opoti is a resident of the Hamline-Midway Neighborhood and a nurse at Central High School where many of the students are from the Hamline-Midway Neighborhood. The Gun Shop was a subject of a debate among the students at the high school. Some students initiated a petition drive opposing the Gun Shop, many are concerned with escalating violence and feel that the Gun Shop will add to that violence, while others are fascinated by guns and feel that the opening of the Gun Shop lends legitimacy to their interest. Opoti pointed out that one of the school bus stops in the Neighborhood is next to the Gun Shop and those children would have no choice of avoiding the Gun Shop. Opoti has never seen a gun at Central High School and does not believe that they are a problem there yet.

27. James Carmouche, a 20-year resident of the Hamline-Midway Neighborhood, moved into the Neighborhood because he considered it to be free of crime, the place to raise children, the place to express himself without being reproached, a place with decent neighbors and a place to live a decent life, all after having grown up in Chicago and living in North Minneapolis and South Minneapolis low-income and poor neighborhoods where violence was common. Over the years, he has noticed some changes in the Hamline-Midway Neighborhood indicating the encroachment of increased violence, gang graffiti, littering and other disrespect for the law, but at the same time he has seen the very strong effort among the residents of the Neighborhood to halt such changes. He believes that the Gun Shop would encourage an increase in

violence because it would allow greater access to guns and ammunition, In his experience, gun shops are the location where adult gang members and irresponsible adults buy their ammunition, which they sometimes then provide

to underage children. It is his view that preventing another source of ammunition from becoming available will help delay the encroachment of violence

28 Because the perception of a substantial number of people is that the Gun Shop indicates the decline of a neighborhood and is a business they do not want to live near, the demand for houses in the Neighborhood will decline. As a result, property values in the Neighborhood will also decline. This decline will occur regardless of whether there is any factual justification for the perceptions,

29. William Rolf, a professional realtor, but not a licensed appraiser, has sold several homes in the Hamline-Midway Neighborhood. The buyers of four of those homes have contacted him about the presence of the Gun Shop. Two of them were very disappointed about the presence of the Gun Shop and probably would not have purchased their homes had they known it would be opened. The other two expressed some concern about the effect of the Gun Shop, but did not have such strong reactions. It is Rolf's opinion based on the fairly strong reactions of the people who had purchased homes in the Neighborhood, that potential buyers will have about the same reaction to the Gun Shop because potential buyers would tend to be similar in background to the actual buyers and generally looking for the same type of properties, and, thus, property values would be depressed. He is of the opinion that location is the principal determinant in establishing the value of homes and that the perception of buyers is the primary factor in evaluation location. He was not aware of any particular study regarding the impact of gun shops on property values and felt that such a study would be difficult to do because of the multitude of factors involved in establishing property values.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The City Council and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. 14.55 and 310.05(c-1) of the St. Paul Legislative Code.

2. The Coalition is entitled to appear in this matter with all the rights of a party. The Coalition filed a timely Petition to Intervene, represents persons who would be affected by the grant of a dealer's license to

the Gun Shop, appears to represent the interest of a substantial number of the residents of the Hamline-Midway Neighborhood and represents persons whose interests are not otherwise adequately represented in this matter.

3. Section 225.08(a) of the St. Paul Legislative Code provides:

No person shall engage in the business of selling or dealing in firearms or ammunition in Saint Paul without first obtaining a license to do so from the city council. The fee for such license shall be ten dollars (\$10.00), payable annually to the Division of License and Permit Administration.



This section is part of Ch. 225 of the Legislative Code that was adopted in 1956 or Before and deals with weapons. It includes several provisions prohibiting various firearms and other weapons and regulating their ownership and use .

4 In 1985, Minn. Stat sec. 471.633 was enacted. It States:

The legislature preempts all authority of a home rule charter or statutory city including a city of the first class, county, town, municipal corporation, or other governmental subdivision, or any of their instrumentalities, to regulate firearms, ammunition, or their respective components to the complete exclusion of any order, ordinance or regulation by them except that:

a. a governmental subdivision may regulate the discharge of firearms; and

h. a governmental subdivision may adopt regulations identical to state law.

Local regulation inconsistent with this section is void,

5. Section 225.08 requiring a license to sell firearms is not preempted  
"I made void by Minn. Stat. 471.633 because it does not regulate firearms, Ammunition or their respective components,

6. Chapter 310 of the St. Paul Legislative Code is entitled, "Uniform License Procedures." Section 310.01 is the definition section and provides, in relevant part:

Sec. 310.01. Definitions.

For the purposes of this chapter, any chapter of the Legislative Code pertaining to licenses as hereinafter mentioned, and subsequently enacted ordinances establishing or relating to the requirements for Class 1, Class 11 and Class III licenses under authority of the City of Saint Paul, the terms defined in this section shall have the meanings ascribed to them:

Adverse action means the revocation or suspension of a license, the imposition of conditions upon a license, the denial of an application for the grant, issuance, renewal or transfer of a license, and any other disciplinary or unfavorable action taken with respect to a license, licensee or applicant for a license. Adverse action includes any of the foregoing directed at one or more licenses held by a licensee at any location in the City of Saint Paul.

Chapters and these chapters shall mean this Uniform license ordinance. any chapter of the Legislative Code pertaining to licenses as hereinafter mentioned," and subsequently enacted ordinances establishing or relating to the requirements for Class I, Class II and Class III licenses under authority of the City of Saint Paul.

Section 310.01 then defines Class I licenses as those that can be approved by a license inspector and lists those licenses and the chapter of the Legislative Code in which they are established, defines Class II licenses as those which can be approved by the director and lists those licenses and the chapters in which they are defined and defines Class III licenses as those which can be approved only by the City Council and lists those licenses and chapters in which they are defined, Firearms dealer's licenses established under ch. 225 of the Legislative Code are not among the licenses or chapters mentioned in 310.01.

6. Section 310.04 of the Legislative Code establishes the procedure for review and approval of license applications under the Uniform License Procedures for Class III licenses after a completed application is received and investigated, the City Council is notified and a public hearing by the appropriate committee is held. Where the inspector recommends denial or the committee believes that evidence might be received at public hearing which might result in action adverse to the application, the hearing procedures established in 310.05 are to be followed. Under 310.05, where there is a dispute as to the facts underlying a license action, a hearing shall be conducted before a hearing examiner appointed by the council who shall make Findings of Fact, Conclusions and a Recommendation to the council. In this case, that procedure was followed. The director of LIEP recommended to the council, after investigation, that the license be granted. The council, or a committee thereof, determined that there were disputed issues and referred the matter to hearing before an Administrative Law Judge of the Office of Administrative Hearings acting as Hearing Examiner.

7. Section 310.06 of the Legislative Code provides, in relevant part:

Sec. 310.06. Revocation; suspension; adverse actions; imposition of conditions.

(a) Council may take adverse action. The council is authorized to take adverse action, as defined in Section 310.01 above, against any or all licenses or permits, licensee or applicant for a license, as provided in and by these chapters.

2 In its Petition for Intervention, the Coalition quoted this section, but deleted the underlined words, thereby changing the meaning of the language entirely



(b), Basis for action, such adverse action may be based on one or more of the following reasons, which are in addition to any other reason specifically provided by law or in these chapters:

,6) a. The licensee or applicant (or any person whose conduct may by law be imputed to the licensee or applicant) has violated, or performed any act which is a violation of, any of the provisions of these chapters or of any statute, ordinance or regulation reasonably related to the licensed activity, regardless of whether criminal charges have or have not been brought in connection therewith:

b. The licensee or applicant has been convicted of a crime that may disqualify said applicant from holding the license in question under the standards and procedures in Minnesota Statutes, Chapter 364: or

(7) The activities of the licensee is the licensed activity created or have created a serious danger to the public health, safety or welfare, or the licensee performs or has performed his or her work or activity in an unsafe manner.

(8) The licensed business, or the way in which such business is operated, maintains or permits conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public.

8, By its own terms, the provisions of Ch. 310 of the Legislative Code, do not apply to a firearms dealer's license issued under 225.08 because Ch. 310 applies only to licenses issued under the chapter specifically listed in 310.01 Ch. 225 is not one of "these chapters." Thus, the bases for adverse action provided under 310.06 do not apply because they apply only to licenses and permits as provided in and by "these chapters." It is noted that a few provisions of Ch. 310 do apply beyond the defined chapters. For example, 310.07, regarding bond and insurance requirements, applies to, "All licenses or permits which must, by the provisions of these chapters, or other ordinances or laws, be accompanied by the filing and maintenance of insurance policies." Section 310.11, regarding transfers, similarly refers to licenses or permits issued by the City pursuant to "these chapters or other ordinances or laws." No such language appears in 310.01 or 310-06,

9. Despite the fact that Ch. 310 of the Legislative Code does not

expressly apply to a firearms dealer's license, it is nonetheless appropriate to apply the procedures and standards set forth in Ch. 310 to such a license for several reasons. First, 225.08 does not set forth any standards for licensure and it is necessary to impute some reasonable standards. Second,

LIEP has followed the procedures tot Class III licenses in evaluating this application and making a recommendation to the council. Third, the procedural provisions, including the hearing procedure, establish a reasonable procedure that provides due process for applicants for firearms dealer's licenses. Fourth, Minn. Stat. A 609.74 defines a public nuisance, in part, as maintaining or permitting a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort or repose of any considerable number of members of the public and makes the intentional doing of such an act a misdemeanor. This is identical to the standard set forth in 310.06(b)(8) and the City has a right to refuse to license a business that constitutes a public nuisance. Fifth, the granting of a firearms dealers license is very much like the granting of a special use or conditional use permit in that it relates to the use of a property and is a use that is allowed within property.zoned areas. but only with permission of the municipality. A city has broad discretionary power to grant or deny an application for a conditional use permit, but any denial must be for reasons relating to public health, safety and general welfare. Scott County Lumber v, City of Shakopeg, 417 N.W.2D 721 (Minn. App. 1988), rev. den, (Minn. March 23, 1988). This is similar to the standard set forth in 310.06(b)(7). Thus, even though the standards of i 310.06(b) do not expressly apply to licenses under 225.08 of the legislative code, the standards set forth there are generally appropriate t) nil licenses issued to the city and may be applied to a firearms dealer's license ,

10 The license may be denied if it is concluded that the Gun Shop will unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public, While 310.06(b)(8) speaks in terms of a business that "maintains or permits conditions" that cause such results, nothing prohibits the City from determining that such conditions will exist even though the business is not yet in operation. The question is whether the evidence is sufficient to reach such a conclusion. Courts have enjoined proposed businesses that have been determined to be nuisances in a particular location, Meagher\_y. Kedsler, 147

Minn. 182, 179 N.W. 732 (1920), and municipalities may deny licenses to applicants where it appears that they are not in compliance with the law. In this particular case, the Gun Shop storefront already exists, even though it is not in operation, and has had an impact which the Coalition alleges already constitutes a nuisance.

11. Perkins' participation in "shining" deer on at least one occasion constitutes a violation of what is now Minn. Stat. 97B.081. That section prohibits shining a light on a wild animal while having a loaded uncased firearm in possession. Minn. Stat. 97A.331 makes violation of that section a gross misdemeanor. According to Joan Perkins' believable testimony, Perkins shot at a deer at least once while truck headlights were fixed upon the deer sometime in the 1970s.

12. The deer-shining violation is too remote in time to constitute any grounds for denying the license application in this matter. That would be true even if Perkins had been arrested and convicted of committing the crime under the provisions of Minn. Stat. Ch. 364 which deals with the rehabilitation of criminal offenders. Perkins and his friends were quite young at the time, it's been several years since the shining occurred and there have never been any subsequent convictions or parole violations. Moreover, Minn. Stat, 364.02, subd. 5, indicates that only conviction of crimes of

misdemeanor level or above may be considered by licensing authorities and Minn. Stat. sec. 364.04 indicates that criminal records of arrests not followed by a valid conviction cannot be used in connection with an application for a license. Thus, if Perkins had been arrested, but not convicted of shining deer, the information could not be used. The intent of the law appears to be that use of information where he has not been arrested at all is also prohibited.

it It cannot be determined whether the sawed.off shotgun Perkins showed that Perkins in 1986 constituted a violation of Minn. Stat. 609.67 which prohibits the ownership, possession or operation of a machine gun or shot-barrel shotgun. First, it is not known how long the weapon was, just that Perkins told Joan Perkins that it was less than 18 inches long and illegal. Second, under Minn, Stat. 609.67, subd. 3, such shotguns may be Possessed if they are collector's items and reported to the Bureau of Criminal Apprehension. There is no information in the record regarding whether the shotgun was a collector's item; all we know is that Perkins is a Federally licensed firearm's collector. Because it is not known whether Minn. Stat. sec. 609.67 has been violated by Perkins and for the reasons set forth above regarding Minn. Stat. Ch, 364, Perkins' possession of the possibly illegal sawed off shotgun in 1986 cannot constitute a basis for denying the licensen.

14. Perkins' acts of discharging a firearm in his shooting range on at least one occasion since 1986 constitutes a violation of 225.10 of the Legislative Code which prohibits the discharge of a firearm within the city except in certain cases. The only possible exception that might apply allows the discharge of firearms in an indoor target range operated under the supervision of a registered target-shooting or sportsmans club. Perkins has not registered with the Chief of Police as a target-shooting or sportsmans club, so the exception does not apply. Perkins has admitted discharging firearms in connection with the testing of reloaded cartridges with the chronograph and has told Joan Perkins that the shooting range is his private shooting range There is no evidence, however, that he has used it at all in the recent past. Second-hand hearsay indicates that he may have allowed his son and nephew to use the range within the last year or so. Again, however, the violations cannot be used to deny the firearms dealer's license for a number of reasons, First, Perkins has not been arrested and convicted of any such crime and its use is therefore limited under Minn. Stat. Ch. 364. Second, there appears to be nothing illegal about a shooting range itself Even Officer Timm, the firing range officer from the St. Paul Police



Department called by the Coalition as an expert in such matters, testified that if someone wanted to have a private shooting range in their basement, nothing prohibited it. Third, the extent of the use of the shooting range at the present time is unknown and when it has been used proper shooting and safety precautions have been maintained. Again, this violation is somewhat vague, not particularly serious and not indicative of any likelihood that the business of Saint Paul Firearms Company will be conducted illegally. Therefore, it should not constitute a basis for denial of the license.

15. As discussed in the Memorandum, the existence and operation of the Gun Shop in its particular location does and will unreasonably annoy the comfort and repose of a considerable number of members of the public and constitutes a public nuisance.

16. The application for a firearms dealer's license should be denied.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the City Council DENY the application

Saint Paul Firearms Company for a firearms dealers license at 634 North Snelling Avenue

dated this 29th day of July, 1993.

STEVE M. MIHALCHICK  
Administrative Law Judge

#### NOTICE

the City Council is respectfully requested to provide a copy of its final decision to the Administrative Law Judge by first class mail.

Reported: Taped, not transcribed. Six tapes.

#### MEMORANDUM

There can be no doubt about the grave concern of most of the public and public officials about the increasing use of firearms to resolve conflicts and to demonstrate power, particularly among male youth and young adults. Obviously, there are several causes of this phenomenon, as various witnesses noted, Whatever the cause is, the fact is that the public and particularly the young, have a great deal to fear from the indiscriminate and malicious use of firearms by others in the schools and on the streets. Thus, the desire to feel free of such threat in and around our homes and the repugnance toward gun shops felt by many people is not unreasonable. Obviously, legitimate gun shops cannot be said to be the cause of handgun violence in our schools and on our streets. But the evidence here shows that they are not unreasonably viewed as some small factor in it, As reported in the press, gun shops have become targets for burglaries and robberies of handguns. There are also those people who legally purchase firearms and ammunition from the gun shops themselves and then turn around and provide them to others or are themselves the victims of theft of the weapons and ammunition. Clearly, the selling of

firearms and ammunition is legal and the great majority of the people who buy

runs and ammunition do so for legitimate purposes and do not contribute to the increasing firearm violence. Nonetheless, the fear and repugnance a large number of people have toward gun shops and the strong desire to not have a gun shop located near their homes and children is real. Understandable and not unusual.

The Administrative Law Judge finds no significant difference between the facts in this case and the cases earlier this century that found funeral homes

to be nuisance when located in strictly residential areas. In *City of St.*

*Paul v. Kessler*, 146 Minn. 124, 178 N.W. 171 (1920), the court agreed with other courts 'that the ordinary normal person cannot live next door to an undertaking establishment or funeral homes where dead bodies are continuously

in and out and are kept for longer or shorter periods without thereby being more or less deprived of the comfortable enjoyment of his home." In *Meagher v. Kessler*, 147 Minn. 186, 179 N.W. 732 (1920), the court used the same language and concluded that when a business in a strictly residential district impairs the enjoyment of homes in the neighborhood and infringes on the well being and comfort of the ordinary, normal individual residing 'herein, the business in such a locality becomes a nuisance. Today, in an urban area, ordinary normal individuals are greatly discomforted by the presence of a gun shop, particularly in areas where it impacts upon children.

The most difficult question in this case is whether the Gun Shop constitutes a nuisance in its particular location. Clearly, the Gun Shop would be a nuisance if located one block to the east in the midst of single-family homes. But on Snelling Avenue, it is located in a commercially-zoned district on a street that contains mostly commercial establishments and few homes. Nonetheless, under the peculiar facts of this

case, it is concluded that the Gun Shop does constitute a nuisance within the

Hamline-Midway Neighborhood. Snelling Avenue near the Gun Shop contains businesses that, in large part, serve the Neighborhood. On the same block are

a dentist, photography studio and oil change service station. Upstairs from the Gun Shop are apartments. On the next block is a large recently-improved

playground and Neighborhood meeting building. The residents of the Neighborhood and their children use this area of Snelling Avenue extensively.

There is a school bus stop located there. The Gun Shop in this location on Snelling Avenue has the same impact as it would if it were located one block to the east surrounded by private homes. Thus, it constitutes a nuisance in its location.

The Applicant argues that it cannot be treated differently from the other

City licensed firearms dealers, particularly those located within the

Hamline-Midway Neighborhood. There is, of course, a sound legal basis for that argument. Tamarac-Inn Inc. v. City of Long Lake 310 N.W.2d 474 (Minn. 1981); Northwestern College v. City of Arden Hills, 281 N.W.2d 865 (Minn. 1979). However, the public nuisance issue apparently was not raised at the time those dealers were licensed, nor is it known whether the particular facts in those cases would also constitute a nuisance. Moreover, a gun shop that stocks many firearms and much ammunition is substantially different from a pawn shop that may have a few guns, a hardware store that might have some ammunition or a convenience store that may sell some ammunition. Nor is this a matter of denying the application simply because of the opposition of neighbors or possible decline in property values. The Coalition has proved

,hat the Gun Shop, in its location. constitutes a public nuisance. For that reason, the application may be denied. The Applicant also argues that the Gun shop in not the cause of all the violence and that it is not responsible for ill "of societv's problems. That is not the point here, Funeral homes were not the cause of death and finding them to be nuisances in particular locations was not a declaration that they were responsible for people dying and the feelings of people surrounding death and funeral homes. But people do have those feelings and in the case of the Gun Shop, ordinary people have Comparable feelings of revulsion because of the part, however small it is, that qun shops have in the firearm violence that now exists,

SMM